

# LEE LITIGATION GROUP, PLLC

148 WEST 24TH STREET, 8TH FLOOR  
NEW YORK, NY 10011  
TEL: 212-465-1188  
FAX: 212-465-1181  
INFO@LEELITIGATION.COM

WRITER'S DIRECT: (212) 465-1188  
cklee@leelitigation.com

April 7, 2022

**Via ECF:**

The Honorable Paul G. Gardephe, U.S.D.J.  
United States District Court  
Southern District of New York  
40 Foley Square, Room 2204  
New York, New York 10007

Re: *Thompson et al., v. Elev8 Foundation Inc., et al.*  
No. 1:20-cv-09581 (PGG) (JLC)

Dear Judge Gardephe:

We are counsel to Plaintiffs in the above-referenced matter and write in response to Defendants' letter filed on April 6, 2022 [Dkt. No. 67].

Plaintiffs filed the Second Amended Complaint on March 30, 2022, under the belief that Judge Cott had granted leave to amend the Complaint. Plaintiffs reached out to counsel for Defendants to request their consent to file the Second Amended Complaint on Friday, March 25, 2022, but Defendants never responded.

Neither party objected to the Report and Recommendation, and so in the interest of protecting putative 216(b) collective Plaintiffs' rights, Plaintiffs filed the Second Amended Complaint so that Plaintiffs could begin the process of renewing their motion for conditional certification [Dkt. No. 65], previously filed and denied in light of Judge Cott's Report and Recommendation, as the statute of limitations continues to run until putative collective Plaintiffs opt-in.

We understand there may have been some confusion in regard to the Order, and therefore, in the alternative, if the Court were to deem that Judge Cott had not granted leave of Court, then pursuant to the Judge Cott's February 28, 2022 Order [Dkt. No. 64] and Federal Rules of Civil Procedure Rule ("F.R.C.P.") 15(a)(2), Plaintiffs' respectfully request leave from the Court to file Plaintiffs' Second Amended Complaint.

F.R.C.P. 15(a)(2) permits a party to amend their pleading with leave of the Court, and the Court should freely give leave when justice so requires, unless doing so would be futile, in bad faith, cause undue delay, or cause undue prejudice to the opposing party. *McCarthy v. Dun & Bradstreet Corp.*, 482 F.3d 184, 200 (2d Cir. 2007).

As enumerated in the Court's Order [Dkt. No. 64], Defendants would not be prejudiced by Plaintiffs' being granted leave to amend. Discovery has continued to run, no depositions have taken place, and the amendments to the Complaint would not be adding new claims or parties that

may require new legal strategies or discovery mechanisms, but rather, are solely supplementing Plaintiffs' current allegations. Furthermore, no other dispositive motions have been briefed and the case is not set to go to trial. There has been no evidence of bad faith on Plaintiffs part either. Plaintiffs' reviewed Judge Cott's Report and Recommendation and amended the Complaint in an attempt to satisfy Judge Cott's issues. The only issue is procedural in nature, whether Plaintiffs' were permitted to file the Second Amended Complaint. As a result, Defendants have not been prejudiced by Plaintiffs' "bad faith."

Additionally, there has been no undue delay behind the amendment, as the amendment was not necessary until Judge Cott's Report and Recommendation. Furthermore, if the Court is to agree with Defendants position regarding the procedural mechanics that the motion to dismiss and leave to amend has not been granted due to Your Honor not having a chance to adopt, amend, or reject Judge Cott's Report and Recommendation, then that is an additional reason that there has been no undue delay behind the amendment. As a result, Defendants have suffered no prejudice due to undue delay as the alleged delay does not exist.

Finally, the amendment would not be futile as the Court has enumerated the deficiencies in the pleadings which led to dismissal and Plaintiffs are prepared to cure said enumerated deficiencies with the documents obtained from Defendants through discovery.

Therefore, in the case that the Second Amended Complaint is dismissed for procedural reasons, Plaintiff respectfully requests leave of the Court to file the Second Amended Complaint.

We appreciate Your Honor's consideration.

Respectfully submitted,

/s/ C.K. Lee

cc: all parties via ECF